TESTIMONY OF ADULT PROBATION OFFICER CARMEN RODA

IN SUPPORT OF S.B. 387

PUBLIC HEARING, S.B. 387
AN ACT CONCEDRNING THE NONDISCLOSURE OF CERTAIN PERSONNEL OR MEDICAL FILE INFORMATION OF A PROBATION OFFICER TO A PERSON WHO IS UNDER PROBATION SUPERVISION.

March 12, 2014

Good afternoon. First, let me begin by saying thank you to Senator Coleman, Representative Fox and the members of the Judiciary Committee for the opportunity to speak to you.

My name is Carmen Roda. I am an Adult Probation Officer with the State of Connecticut Judicial Branch. I am assigned to the Bridgeport Office. I have been employed by the Judicial Branch for over 12 years with a total of over 22 years of service with the State. I am also the Vice President of the Judicial Professional Employees Union. We are an AFT affiliate. We represent nearly 1300 Judicial Branch employees. 700 of which are probation officers.

It is the mission of the Court Support Services Division to reduce the number of people who reoffend all the while keeping offenders accountable for their actions. It is also, as part of our duties as probation officer, to keep our clients at an arm's length and not to have any undue familiarity with them. This is not only a sound practice, but is part of our Judicial Branch operating procedures. This theme of preventing "undue familiarity" is the purpose behind S.B> 387. If probation officers cannot have undue familiarity with their clients, why should clients have undue familiarity with their probation officers?

S.B. 387 would prohibit those persons on probation or those incarcerated for violation of probation from accessing a probation officer's personnel file or similar file through the Freedom of Information Act. Similar protections currently exist for corrections officers and others with close contact with offenders. I have attached a copy of C.G.S. 18-101f to my written testimony. C.G.S. 18-101f protects corrections officers from inmate FOI requests. In 2011, 18-101f was modified to include the Public Defender's Office. I have attached a copy of Public Act 11-220 to my written testimony.

It is interesting that in the public testimony for those Bills, former Acting Corrections Commissioner Brian Murphy and former Pardon and Paroles Chairman Robert Farr articulate that inmates are using FOI as a means to intimidate staff. This was is no small part because of the daily and direct contact Corrections staff has with inmates. Moreover, it was stated that the corrections function and parole function are not always agreeable to those in custody. I have attached Mr. Murphy's and Mr. Farr's testimony to my written testimony.

It is these same issues that confront probation officers. We have direct daily contact with criminal offenders. The probation function is not always agreeable to those being

supervised. Because of that, we are subject to intrusive inquires of our employment records through the Freedom of Information Act. I will admit that this Bill does nothing to shield our records from the general public. Nor are we asking for that. Rather, we are asking to be protected from FOI requests from those criminal offenders we supervise and those who are incarcerated for violating their probation. We are looking for the same protections afforded to other public servants. S.B. 387 does just that and is similar to that of C.G.S. 18-101f

As public safety professionals we are asking for your help protect our information while we continue to protect the citizens of Connecticut.

Please pass S.B. 387.

Again, thank you for your time and for this opportunity.

I would be happy to answer any questions you may have.

General Assembly

Proposed Substitute Bill No. 5125

February Session, 2014

LCO No. 2438

AN ACT LIMITING ACCESS TO CERTAIN INFORMATION REGARDING PROBA T/ON OFFICERS UNDER THE FREEDOM OF INFORMATION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) *(Effective July 1,* 2014) Any personal information of a current or former probation officer employed by the Judicial Branch that is not related to the performance of such officer's duties or employment, including, but not limited to, such officer's date of birth; Social Security number; current and former electronic mail address, telephone number and residential address; photographs; and driver's license information; shall not be subject to disclosure under the Freedom of Information Act, as defined in section 1-200 of the general statutes, to any individual under the supervision of the Court Support Services Division or any individual committed to the custody or supervision of the Commissioner of
Correction for a violation of section 53a-32 of the general statutes.

This act shall take effect as follows and shall amend the following sections:

Section 1	*July 1, 2014*	New section

Sec. 18-lOlf. Prohibition against disclosure of certain employee files to inmates under the Freedom of Information Act.

A personnel or medical file or similar file concerning a current or former employee of the Division of Public Defender Services, Department of Correction or the Department of Mental Health and Addiction Services, including, but not limited to, a record of a security investigation of such employee by the department or division or an investigation by the department or division of a discrimination complaint by or against such employee, shall not be subject to disclosure under the Freedom of Information Act, as defmed in section 1-200, to any individual committed to the custody or supervision of the Commissioner of Correction or confmed in a facility of the Whiting Forensic Division of the Connecticut Valley Hospital. For the purposes of this section, an "employee of the Department of Correction" includes a member or employee of the Board of Pardons and Paroles within the Department of Correction.

Senate Bill No. 38

Public Act No. 11-220

AN ACT CONCERNING ACCESS TO INFORMATION CONCERNING THE DIVISION OF PUBLIC DEFENDER SERVICES AND SECRET BALLOTS OF VOLUNTEER FIRE DEPARTMENTS UNDER THE FREEDOM OF INFORMATION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subdivision (1) of section 1-200 of the general statutes is repealed and the following is substituted in lieu thereof *(Effective October 1,* 2011):

(1) "Public agency" or "agency" means:

(A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions, and for purposes of this subparagraph, "judicial office" includes, but is not limited to, the Division of Public Defender Services;

(B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law; or

(C) Any "implementing agency", as defined in section 32-222.

Sec. 2. Section 18-101£ of the general statutes is repealed and the following is substituted in lieu thereof *(Effective October 1,* 2011):

A personnel or medical file or similar file concerning a current or former employee of the Division of Public Defender Services, Department of Correction or the Department of Mental Health and Addiction Services, including, but not limited to, a record of a security investigation of such employee by the department or division or an investigation by the department or division of a discrimination complaint by or against such employee, shall not be subject to disclosure under the Freedom of Information Act, as defined in section 1-200,

as amended by this act, to any individual committed to the custody or supervision of the Commissioner of Correction or confined in a facility of the Whiting Forensic Division of the Connecticut Valley Hospital. For the purposes of this section, an "employee of the Department of Correction" includes a member or employee of the Board of Pardons and Paroles within the Department of Correction.

Sec. 3. Subsection (d) of section 1-212 of the general statutes is repealed and the following is substituted in lieu thereof *(Effective October 1,* 2011):

(d) The public agency shall waive any fee provided for in this section when:

(1) The person requesting the records is an indigent individual;

(2) The records located are determined by the public agency to be exempt from disclosure under subsection (b) of section 1-210;

(3) In its judgment, compliance with the applicant's request benefits the general welfare; [or]

(4) The person requesting the record is an elected official of a political subdivision of the state and the official (A) obtains the record from an agency of the political subdivision in which the official serves, and (B) certifies that the record pertains to the official's duties; or

(5) The person requesting the records is a member of the Division of Public Defender Services or an attorney appointed by the court as a special assistant public defender under section 51-296 and such member or attorney certifies that the record pertains to the member's or attorney's duties.

Sec. 4. (NEW) *(Effective October 1,* 2011) Nothing in chapter 14 of the general statutes shall be construed to require the disclosure of secret ballots used for the election of an officer of a volunteer fire department.

Approved July 13, 2011

Department of Correction

Testimony of Brian K. Murphy, Acting Commissioner

Government Administration and Elections Committee

Raised Bill No. 5404, *An Act Concerning the Nondisclosure of Certain Information Regarding Department of Coffection Employees to Inmates Under the Freedom of Information Act*

March 8, 2010

Good morning, Senator Slossberg, Representative Spallone and honorable members of the Government Administration and Elections Committee. Iam Brian K. Murphy, Acting Commissioner for the Department of Correction. Iam here this morning to speak in strong support of the concept contained in Raised Bill No. 5404, *An Act Prohibiting the Disclosure of Employee Files to Inmates An Act Concerning the Nondisclosure of Certain Information Regarding Department of Coffection Employees to inmates Under the Freedom of Information Act.*

Inmate abuse of the Freedom of Information (FOI) process is a new and growing issue for the Department of Correction and other systems across the country. Eleven states have amended their FOI statutes in order to limit inmates' access to records. Washington State most recently amended their laws in March 2009 to limit inmate access.

Inmates are seeking personal information about the DOC staff through the FOIA, as a means or retaliation and intimidation. Over the course of the past six years, the agency has seen increasing usage of the FOIC by the inmate population in our correctional facilities. Ina growing number of instances, inmates are attempting to utilize these statutes as a weapon against my staff. It is becoming part of the inmate culture that if a correctional officer files a disciplinary report against you, or confiscates contraband in your cell; a means of getting back at that officer is to FOI his or her personnel file. Ido not believe that this is what these laws were intended for.

Infighting this and speaking in strong support of the nondisclosure of DOC employee files to inmates, Iam upholding the agency's mission of protecting the public, protecting my staff and their families as well as maintaining the safety, security and good order of our correctional institutions.

FOIC has taken the position that inmates use the FOI process as a means to air grievances about the correctional system. Inmates have appropriate avenues, both internally and externally, to file grievances. There are a number of

administrative and legal remedies readily available to and regularly used by inmates to address complaints about the agency and the staff.

Additionally, nothing in the FOIA requires the disclosure of personnel or similar files which would constitute an invasion of privacy. The FOIC interpretation of this statute is that staff personnel or similar files do not meet the personal privacy criteria and are public records. Idon't believe it was the intent of the legislature to allow the FOIA to be used by the inmate population as a harassment and intimidation tool.

Irespectfully request the passage of legislation that would provide essential statutory protection that would protect my staff from disclosure of personal information to inmates. The majority of the Department's employees are classified as hazardous duty and have regular *daily, direct* contact with the inmate population. They work with accused and sentenced offenders in correctional facilities and with offenders hi the community. Even those employees who do not work directly with the offender population have exposure to and can be affected by those who are incarcerated through their work in facilities and by decisions they may make in the course of their employment.

Gates and wires are security mechanisms to maintain order and safety but the most important tool is the correctional staff. It is the staff that maintains control and order within the facilities and in the community through their interpersonal skills and professionalism.

The safety and security of staff and the facility are severely compromised when inmates have access to an employee's files- whether they are personnel, medical, disciplinary, affirmative action or security investigative files. Providing any information about an employee to an inmate undercuts the training that the Department provides for all new and current employees not to divulge information about themselves or another employee to an inmate. For the Department to be ordered to release such information to inmates places the Department in the untenable position of committing a violation of its own policy – something for which a staff person would certainly be disciplined and more likely be suspended or terminated from state service. Personal information that Ihave described about staff can be and is used to harass, manipulate and extort staff.

The following is an example of how an inmate uses FOI for harassment and intimidation purposes: Inmate T. has requested personnel or similar files on any staff member who issues him a disciplinary report. poor work report or shakes down his cell for contraband--all within the realm of their official duties. The staff member is then placed in the position to defend his personal information from the inmate population.

The Department is currently appealing eight FOIC decisions in which it was ordered *to* release employee files or information to inmates. In one case, *Taylor I*

(2007},[1] the hearing officer recognized the danger in releasing the emfloyee record and found the documents exempt under *C.G.S. §1-210(b)(18).* He based his findings and decision on the testimony presented by me and based on my 26-year history as a correctional professional with special expertise in gang management.

Despite the hearing officer's findings, the full Commission stripped the decision of these findings, did not acknowledge my expert testimony, stated no evidence was presented to support the Department's position and ordered the release of the requested records. The Superior Court sustained the Department's appeal of this order.

That same inmate brought another appeal requesting staff files *(Taylor 11).*[3] In its final decision in this case the FOIC acknowledged that it lost the appeal of the first case *(Taylor* 1). It nevertheless again ordered the release of staff files to the inmate. The FOIC maintained that its decision in *Taylor I* was correct and that, pending final resolution of *Taylor I* by the Appellate Court or Supreme Court, it was bound in *Taylor II* by the same standard of proof applied in the earlier decision. That case, too, is being appealed.

The FOIC's decision in *Taylor I* not only undermines Departmental policy and compromises safety and security within our state's correctional facilities, it ignored a prior Superior Court decision[4] that recognized the legislative intent of *C.G.S. Section 1-210(b)(18),* which gives me, as Commissioner of Correction, the authority to deny disclosure of records that I have "reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility..."

There continues to be requests from the inmate population for staff personnel and similar files. The arguments presented by the Department and the testimony and witnesses put forth by the Department remain the same in all subsequent cases. The safety and security exemption allowed to the commissioner of correction by the legislature with regards to "reasonable grounds" is almost never met, with the exception of one case despite the fact that the staff and members of the Commission have no correctional experience. The outcome from the Freedom of Information Commission does not change.

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[1] *David Taylor v. Commissioner, State of Connecticut, Dept. ofCorr.,* Docket #FIC 2006-502, (9/l2/07)

[2] *C.G.S. 1-2/0(b)(/8)* exempts "Records, the disclosure of which the Commissioner of Correction ...has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Depat1ment of Correction..."

[3] *David Taylor* v. *Commissioner, State of Connecticut, Dept. of Corr.; and State of Connecticut, Dept. of Corr.,* Docket #FfC 2008-029 (12/10/08)

[4] *State of Connecticut, Department of Correction,* v. *Quint & The FOJC, Com1. Super. LEXIS 1742 (J Levine)*

It is estimated that approximately $1 million per year is expended to respond to all inmate FOI requests for the Department as well as other state agencies and municipalities. The Department believes that passage of this language would result in cost-savings to the state. In a recent inmate case, the staff cost to the state taxpayer for just the hearing process exceeded $10,000.

In order to continue to protect the safety of our community, staff and other inmates, we are calling upon the legislature to insure that inmates cannot obtain personal information of correctional staff.

I urge your support for Raised Bill No. 5404 and respectfully request your consideration of the attached proposed substitute language. Passage of proposed substitute language will ensure not only the safety and surety of our correctional staff and their families but also our correctional facilities.

Thank you for giving me this opportunity to speak on this very important issue. will be happy to address any questions you may have.

Government Administration and Elections Committee

Testimony re: **Raised Bill No. 5404**

An Act Concerning the Nondisclosure of Certain information Regarding Department of Correction Employees to Inmates Under the Freedom of Information Act

Submitted by Robert Farr, Chairman- Board of Pardons and Paroles
March, 8th, 2010

Good morning, Senator Slossberg, Representative Spallone and honorable members of the Government Administration and Elections Committee. Iam Robert Farr, Chairman of the Board of Pardons and Paroles. am here this morning to support the concept contained in Raised Bill No. 5404, *An Act Prohibiting the Disclosure of Employee Files to Inmates An Act Concerning the Nondisclosure of Certain information Regarding Department of Correction Employees to inmates Under the Freedom of Information Act.*

Inmate abuse of the Freedom of Information (FOI) process is a new and growing issue for the Department of Correction and other systems across the country. Eleven states have amended their FOI statutes in order to limit inmates' access to records. Washington State most recently amended their laws in March 2009 to limit inmate access.

Iconcur with the Commissioner Murphy's testimony where he states that Inmates that are seeking personal information about the DOC staff through the FO!A, are doing so as a means of retaliation and intimidation.

For that reason, I would request that this legislation be amended to mirror the substitute language in SB 221 as reported out by the judiciary committee, which would protect members and employees of the Board of Pardons and Paroles.

Whereas Freedom of Information Requests have been levied against correctional staff, they can also be directed toward members and/or officers of the Board of Pardons and Paroles. Many inmates who are not happy with the Board and its decision-making authority or officers who present cases to the Board can seek to retaliate against my fellow members and staff as well.

Given that the Department of Corrections has seen an increase in usage of the FOIC by the inmate population in our correctional facilities, Ifear that is only a matter of time before many of these requests are levied against our agency. I do not believe that this is what the Freedom of Information was established for.

Thank you for your attention. Iwould be happy to any questions you may have.

Sincerely,

Robert Farr

Robert Farr, Chairman